motely connected with the accident, the proximate cause of which was the inability of the engineer to stop because of the violation of the speed ordinance.

TRUSTS—PAROL TRUSTS IN REAL ESTATE—STATUTE OF FRAUDS.—All the members of a family including the plaintiffs and defendant, intended that title to a burial lot should be taken in the name of the father, but by mistake the deed was taken in the name of the defendant. The father died without knowledge of the mistake. After his death the defendant orally agreed to hold the lot for the benefit of the plaintiffs. Later defendant claimed an absolute and unconditional title and plaintiffs thereupon brought suit to establish a trust in the lot. *Held,* under Rev. Laws, c. 147, § 1, providing that no trust in land shall be created, unless by an instrument in writing, equity could not enforce the trust against the defendant. *Tourtillotte et al.* v. *Tourtillotte et al.* (1910), — Mass. —, 91 N. E. 909.

In most of the states the English statute of frauds, providing that all declarations or creations of trusts in lands, except those implied by law, shall be manifested and proved by some writing signed by the party declaring the trust, has been re-enacted in its original or in a slightly modified form. 28 AM. & ENG. ENCY. Law, Ed. 2, 874. Under such a statute an oral promise by a grantee to hold the land in trust is unenforcible. *Pollard* v. *McKenney,* 69 Neb. 742; 101 N. W. 9; *Thompson* v. *Marley,* 102 Mich. 476, 60 N. W. 976; *Heddleston* v. *Stoner,* 128 Ia. 525, 105 N. W. 56; *Thomas Adm'r.* v. *Merry,* 113 Ind. 83, 15 N. E. 244. If, however, a person, through mistake, obtains the legal title and apparent ownership to property which in justice and good conscience belongs to another, such property is impressed with a trust in favor of the equitable owner. *Cole* v. *Fickett,* 95 Me. 265, 49 Atl. 1060; *Lamb* v. *Schiefner,* 129 App. Div. 684; 114 N. Y. Supp. 34; *Andrews* v. *Andrews,* 12 Ind. 348; *Harris* v. *Stone,* 8 Ia. 322. *Smith* v. *Walser,* 49 Mo. 250. Furthermore equity will raise a constructive trust to defeat fraud. *Rollins* v. *Mitchell,* 52 Minn. 41, 53 N. W. 1020; *Ryan* v. *Dox,* 34 N. Y. 307, 90 Am. Dec. 696; *Moore* v. *Crawford,* 130 U. S. 122. The principal case does not seem to be in accord with the weight of authority, unless the court was confined to the question whether or not the oral declarations, apart from the other circumstances in the case, were sufficient to create an enforcible trust.

WILLS—NATURE OF ESTATE—RULE IN SHELLEY'S CASE—"ISSUE."—A devise was made in the following language: "I give and devise unto my son Jacob E. Kemp the use and income for and during his lifetime of * * * (describing certain real property) and immediately after the decease of said Jacob E. Kemp, I give and devise * * * the land devised to him herein for life, to his issue in fee." Then followed a devise over in case of his death without issue. The rule in *Shelley's* case was in force. *Held,* the rule in *Shelley's* case does not apply here, since it was the intention of the testatrix to limit the estate of the first taker to one for life, and his issue do not take as heirs but are intended themselves to become the root of a new succes-

sion, taking as purchasers from the testatrix. *Kemp* v. *Reinhard et al.* (1910), — Pa. —, 77 Atl. 436.

The case of *Guthrie's Appeal,* 37 Pa. 9, is the only case cited by the court in support of its holding. There the words of the will were "I give and bequeath to my daughter * * * the use and life estate in her own proper person (but without power to convey the same to any other person for any period of term) * * * and at the decease of my said daughter Elizabeth, the said lot or tract of land and appurtenances I hereby bequeath to such of her children or their heirs as may survive her etc." The court there held the word children a word of purchase, and proceeded to discuss other such words. They say: "The word "issue" is of doubtful meaning, though usually a word of limitation in a will but requiring only a clear explanation to justify a departure from the ordinary meaning, imposing on those who would translate the term the onus of producing an express warrant under the hand of the author of the gift." In *McKee* v. *McKinley,* 9 Casey (Pa.) 92, it was said that "If the remainder is to persons standing in the relation of heirs, general or special, of the tenant for life, the law presumes them to take as heirs, unless it unequivocally appears that individuals, other than persons who are to take simply as heirs are intended." STRONG, J. in the *Guthrie* case (supra) says such a presumption is made only when technical words of limitation are applied to the remaindermen, when the gift is to "heirs" or "issue." The presumption would according to this case arise in the principal case. The court must therefore have found in the words of the will an unequivocal intent that the issue of the devisee were to become the root of a new succession and were not intended by the testator to take as heirs. This seems to be an example of the extremities to which courts professing to be governed by the Rule in *Shelley's* case will go in order to avoid applying the rule. A few of the cases construing the word "issue" are *McIlhinney* v. *McIlhinney* (1893), 137 Ind. 411; *Gonzales* v. *Barton* (1873), 45 Ind. 295; *King* v. *Melling* (1673), 2 Lev. 58; Denn, ex Dem. *Webb* v. *Puckey* (1793), 5 T. R. 299; *Frank* v. *Storin* (1803), 3 East 548.

WILLS—PROBATE—UNDUE INFLUENCE—BURDEN OF PROOF.—A will left almost the entire estate of testatrix to her brother, his wife and daughters, with a bequest of ten dollars to an only son for whom testatrix had often expressed an intention of providing. The brother had been the business advisor of testatrix, she had lived in his home and he and his family had not for some time prior to her death permitted her to be alone with her son. It was shown that the will, which made the brother executor, was procured by him and drawn under his direction; that testatrix was ill and feeble at the time the will was witnessed and did not speak of the will in the presence of the witnesses. Nor was it shown in proof that the will was ever explained to her—she could neither read nor write—or that she fully understood its contents. *Held,* when a will is executed through the intervention of one occupying a confidential relation toward testatrix whereby such person is the executor and a large beneficiary, the law casts upon him the burden of removing the suspicion thereby created that the will was not the free